

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission
System Operator**

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Docket No. ER02 -947-000

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission ("ICC") hereby submits its comments in the above captioned proceeding in response to a revised filing submitted by the Midwest Independent Transmission System Operator ("Midwest ISO").

I. Background

On February 1, 2002, the Midwest ISO tendered for filing with the Federal Energy Regulatory Commission ("Commission") proposed revisions to the Midwest ISO Open Access Transmission Tariff ("OATT"). The intent of the revisions, as stated in Attachment T of the revised filing, was to accommodate retail customer choice in Illinois, Michigan and Ohio. Pertaining to Illinois, Attachment T proposed to revise the Midwest ISO OATT, insofar as it was applicable to service in Central Illinois Light Company's ("CILCO") service territory to: (1) define terms specific to Illinois' retail direct access program; and (2) clarify the Midwest ISO's provision of transmission service in the specific Illinois retail direct access context. ¹The

¹Midwest ISO's February 1, 2002 Attachment T filing, Transmittal Letter, at 5.

Commission officially noticed the filing on February 6, 2002, establishing February 22, 2002, as the Comment Date.

On March 5, 2002 the ICC submitted comments to the Commission regarding the portion of Attachment T pertaining to Illinois. ²Specifically, the ICC recommended that the Commission: 1) direct the Midwest ISO to revise the Illinois portion of Attachment T applicable to transmission service provided in CILCO's service area to better accommodate retail direct access in Illinois, which revisions are shown in Appendix A of the ICC's Comments and explained in Section A of those Comments; and 2) apply the portion of Attachment T relevant to Illinois, as revised by the ICC in Appendix A, to all Midwest ISO utility participants required to provide delivery services under Illinois statute, in particular to those participants operating in the Illinois service territory of Alliant Weston on behalf of Interstate Power Company and in the service territory of American Transmission Company on behalf of South Beloit Water & Gas Company.³

On March 11, 2002, in response to post-filing discussions with both the ICC and CILCO, the Midwest ISO filed revisions to Attachment T. ⁴In that filing, the Midwest ISO states that the following revisions were made at the suggestion of the ICC ⁵:

1. Section 2.2 of the Illinois Section of Attachment T was revised to include language that clarifies that, for the purposes of Section 2.2, retail customers are existing firm service customers;
2. Section 24.1 of the Illinois Section of Attachment T was revised at the request of the ICC to delete language that confuses the issue of when a transmission customer is to retain ownership of metering equipment; and
3. Sections 3.5 and 3.6 of the Illinois Section of Attachment T have been deleted because the ICC believes that they do not facilitate retail direct access in Illinois

²The ICC has currently pending before the Commission a request, unopposed by the Midwest ISO, to defer the February 22, 2002 filing date or, in the alternative to extend that date to March 5, 2002. FER has not yet ruled on the ICC's request.

³ICC Comments on Midwest ISO's February 1 Attachment T filing, at 3.

⁴Transmittal Letter, at 1

⁵Transmittal Letter, at 2

and that they discriminate against unbundled service in the Central Illinois Light Company's service territory.

In addition to the ICC's suggested revisions, the Midwest ISO states that, at CILCO's suggestion, it proposed the following changes to Attachment T⁶:

1. Section 2.2 has been revised to capitalize Transmission Service as a defined term in the Midwest ISO OATT;
2. Section 2.2 has been revised to extend the transmission reservation priority to Bundled Load customers when they initially request unbundled transmission service;
3. Sections 3.5 and 3.6 have been changed to reflect the revision of the penalty provisions for unauthorized use contained in CILCO's OATT to conform to the current penalty provisions in the Midwest ISO OATT;
4. Section 7.3 has been changed to delete provisions already contained in the Midwest ISO OATT;
5. Section 24.1 has been modified to conform with the applicable rules and regulations of the ICC that apply to metering, except as regards dynamic scheduling, which would be covered by a separate agreement; and
6. Section 29.4 has been changed to delete the provisions applicable to Network Customer Facilities as these provisions are already covered in the Midwest ISO OATT.

In addition to the revisions suggested by both the ICC and CILCO, the Midwest ISO modified Attachment T to apply to all retail customer staking service under the Midwest ISO OATT in each respective state, instead of just to the customers of certain transmission owners identified in the Midwest ISO's February 1 filing.⁷

The Midwest ISO has requested a retroactive effective date of February 1, 2002 to coincide with the commencement date of transmission service under the Midwest ISO.⁸

The Commission officially noticed the filing on March 14, 2002 and established April 1, 2002 as the deadline for comments and protests.

⁶Transmittal Letter, at 2

⁷Transmittal Letter, at 1

⁸Transmittal Letter, at 2

II. Recommendation

The ICC recommends that the Commission direct the Midwest ISO to delete Section 7.3, in its entirety, from the Illinois portion of Attachment T. As explained *infra*, Section 7.3 does nothing to accommodate retail choice in Illinois. Moreover, its inclusion in Attachment T grants additional authority to the Midwest ISO that, in the ICC's view, is unwarranted.

III. Discussion

In its March 5 Comments regarding the Midwest ISO's February 1 Attachment T filing, the ICC recommended that certain modifications be made in order for the Illinois portion of the Midwest ISO's Attachment T to comport with Illinois' retail choice regime.⁹ While the Midwest ISO's revised Attachment T incorporates the majority of the ICC's suggested revisions, its revisions regarding Section 7.3, limited as they are to the deletion of provisions already found in the Midwest ISO OATT, do not sufficiently address the ICC's concerns.

Even as revised, Section 7.3 permits the Midwest ISO, as a transmission provider, to terminate transmission service immediately if an Illinois alternative retail energy supplier ("ARES") fails to make full payment to the Midwest ISO within the designated time period. Such termination is permitted in cases in which Illinois retail service tariffs provide for the continuation of retail service by another supplier (other than the ARES that the Midwest ISO has terminated).

The ICC stands by its original criticism of Section 7.3 as doing nothing to accommodate retail direct access in Illinois and reiterates its recommendation that Section 7.3 be deleted in its entirety from Attachment T. In contrast, Section 7.4 references the ICC's statutory authority to de-certify an ARES and transfer that load to another supplier. It is the ICC authority referred to

⁹ICC Comment on Midwest ISO's February 1 Attachment T filing, at 3.

in Section 7.4 that facilitates a smooth retail direct access program in Illinois and protects retail customers.

Attachment T's proposed Section 7.3, on the other hand, is designed solely to benefit the Midwest ISO by providing it with an additional method to discontinue providing transmission service to an ARES. The Commission should not provide the Midwest ISO with this additional authority. The provisions of the Midwest ISO's current Section 7.3 offer the Midwest ISO sufficient protection in the event an ARES falls behind on transmission service payments to the Midwest ISO. Indeed, the Midwest ISO's existing OATT Section 7.3 permits the Midwest ISO to initiate a proceeding at the Commission through which it can obtain authorization to discontinue transmission service to an ARES upon a proper showing.¹⁰ Additionally, the Midwest ISO or any other interested party can seek to have an offending ARES de-certified by the ICC. Upon such de-certification, Section 7.4 permits the Midwest ISO to terminate transmission service.

IV. Conclusion

For all the aforementioned reasons, the Illinois Commerce Commission respectfully requests that the Commission direct the Midwest ISO to delete Section 7.3 from the Illinois portion of the Midwest ISO's Attachment T. The elimination of Section 7.3 will enable the Illinois portion of Attachment T to comply with Illinois' retail choice regime.

¹⁰Beyond this, the existing provisions of the Midwest ISO OATT already impose stringent credit standards on any entity seeking to obtain transmission service in the first instance. See, e.g., OATT Section 11.

Dated: April 1, 2002

Respectfully submitted,

/s/

ILLINOIS COMMERCE COMMISSION

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